
LEASE AND REIMBURSEMENT AGREEMENT

This Agreement ("Agreement") is effective as of this 23rd day of August 2021 (the "Effective Date") between the CITY OF MESA, an Arizona municipal corporation ("City") and COX COMMUNICATIONS ARIZONA, LLC ("Cox"). The City and Cox may be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

A. City plans to design, construct, install, and use a conduit system for, *inter alia*, telecommunication fiber and related uses. The system will include duct banks with multiple, separate conduits, pull boxes, manholes, and other related improvements (the "City System") as shown in one set of engineering plans on file in the City of Mesa Engineering Department, and as may be amended and shown in the final approved record drawings (collectively, the "Plans").

B. The City will construct the City System across and beneath City property, comprising both right-of-way and APN 138-37-005. Cox desires access to conduit on the same alignment as the City System, and because construction of one system is more efficient, avoids space and other conflicts from separate systems installed at different times, and results in cost savings, the Parties have agreed that as part of the City System, the City will install three two-inch conduits which it will lease to Cox (the "Cox Conduit System"). In exchange, Cox will reimburse the City for the cost of constructing the Cox Conduit System.

C. Upon completion of construction, City will own the City System, including the Cox Conduit System, but Cox will have the right to use the Cox Conduit System pursuant to the terms of this Agreement.

D. The Parties agree to the construction, ownership, use, and maintenance of the Cox Conduit System as set forth in this Agreement.

AGREEMENT

Now, therefore, in consideration of the foregoing recital and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. Grant of Lease. City grants to Cox a lease ("Lease") to use that portion of the City property and right-of-way that is described and depicted in attached Exhibit A (the "Site"), including access necessary to construct, install, use, operate, replace, maintain, upgrade (including the installation of additional fiber and innerduct conduit), and repair the Cox Conduit System, which may include a duct bank with multiple, separate conduits, and pull boxes. The Cox Conduit System is generally depicted in the attached Exhibit B and includes the improvements as shown in the Plans.

2. Cox Conduit System. Upon obtaining all applicable permits from the City, Cox may, at its sole cost and expense, add to, expand, and upgrade, the Cox Conduit System by installing additional fiber, adding additional pull boxes, and making such other related improvements associated with the use of Cox's portion of the duct bank, all of which upon shall be part of the Cox Conduit System. Cox shall NOT license, lease, or sublicense its Cox Conduit System, and any such license, lease, or sublicense shall be void and not voidable.

3. Term. The initial term of this Agreement shall be for fifteen (15 years) (the "Term"), commencing on the Effective Date of this Agreement. At Cox's option, the Agreement shall automatically renew for one additional fifteen (15) year term, provided that Cox is not in breach of this Agreement. If at any time Cox

elects not to renew this Agreement, or otherwise abandons its facilities occupying the Cox Conduit System, the City may take ownership of such facilities at no cost to the City.

4. **Rent.** Rent due under this Agreement shall be a one-time payment equal to the additional cost to design, construct, and install the Cox Conduit System as part of the larger City System, including a portion of the trenching fees and administrative costs incurred by the City, as set forth on the invoice on Exhibit C. Cox will reimburse City immediately upon receipt of the invoice, and Cox shall have no right to occupy the Cox Conduit System until such payment is made in full.

5. **Ownership, Maintenance, Notice, and Construction Activities.** Upon completion of construction, and at all times thereafter, ownership of the Cox Conduit System shall vest in the City. Nevertheless, Cox shall maintain the Cox Conduit System in good repair, in a safe, clean condition, and neat in appearance, at its own expense throughout the Term of this Agreement.

5.1 **Construction Notice, Blue Stake.** Prior to any maintenance, upgrade, or repair to the Cox Conduit System, Cox shall notify 811 or the successor entity or service to 811. Additionally, each Party shall comply with A.R.S. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of any improvements within the Site upon receipt of a locate call or as promptly as possible, but in no event later than two business days.

5.2 **Damage Notification.** If a Party becomes aware of damage to any portion of the Cox Conduit System, that Party shall promptly notify all Parties of the damage so the other Parties can independently inspect whether such damages impacts their operations.

5.3 **Relocation Costs.** In the event the Cox Conduit System must be relocated for reasons other than a request by Cox, and if a commercially reasonable alternative alignment is available, then City shall bear the cost of relocating the conduit and Cox shall bear the cost of removing and relocating its fiber optic cables.

6. **Default.** A Party will be in default if it fails to comply with the terms of this Agreement within thirty (30) days of receipt of written notice reasonably describing the default from a non-defaulting Party.

6.1 **Health or Safety Default.** If any Default poses an imminent threat to the health, welfare, or safety of the City's employees, Council, agents, volunteers, or visitors, the City may immediately, and without notice, take all reasonable action to protect such individuals, provided that the City shall provide written notice to the extent practical based on the circumstances. The City may recover its documented and reasonable costs from the defaulting Party for all such costs, which shall be paid within 30 days of invoice.

6.2 **Good Faith Resolution.** Promptly after the issuance of a notice of default, the Parties shall appoint representatives at their executive levels to discuss in good faith the issues relating to the notice of default. The Parties agree to act reasonably to resolve the default without the need for terminating this Agreement before its expiration date.

6.3 **Remedies.** Whenever any Default occurs and is not cured (or cure undertaken), the non-defaulting Party may take any of the following actions: (i) an action for specific performance and/or injunctive relief to enforce the terms of this Agreement, (ii) any remedies allowed at law or equity and any remedies available under this Agreement, and (iii) termination of this Agreement.

7. Indemnification.

7.1 Each Party (the "Indemnifying Party") and shall indemnify, hold harmless and defend the other Party, and its board, Council, employees, officers, and agents (collectively, the "Indemnified Entities") against any and all liability, claims, costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with or incident to or arising out of: (i) the occupancy, use, service, operations, or performance of work in connection with the Cox Conduit System or this Agreement, (ii) the negligent acts or omissions of an Indemnifying Party or an employee, agent or contractor of the Indemnifying Party. Nevertheless, an Indemnifying Party shall not be responsible for the negligence or willful misconduct of the Indemnified Entities. The amount and type of insurance coverage requirements set forth above will in no way be construed as limiting the scope of indemnification in this paragraph.

7.2 The City, and its employees, officers, and agents assume no responsibility for losses suffered by Cox due to theft or the disappearance of the equipment or other personal property, except those caused by the negligence or willful misconduct of the City, council, employees, and agents, officers or agents.

7.3 The indemnification, duty to defend, and hold harmless obligations set forth in this Paragraph 7 shall survive the termination or expiration of this Agreement.

8. Hazardous Materials. Cox shall not keep, store, sell or dispose of on or about the Site any materials, wastes or substances which are in any way explosive, hazardous, dangerous or toxic under any federal, state or local environmental, health or safety law, ordinance, code, statute, rule or regulation. Cox shall notify City immediately if its employees, agents, or contractors cause any hazardous substance or oil or fuel spillage or release of hazardous materials on the Site. Cox shall indemnify, hold harmless and defend the City, and its employees, officers, and agents against any and all liability, claims, costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property arising out of its use of hazardous substances, wastes, or materials. Each Party shall be responsible for and shall promptly conduct any investigation and remediation as required by any statutory or common law of all actual or potential spills or other releases of any hazardous substances, wastes or materials caused by that its activities or those of its officers, employees, agents or contractors which have occurred on the Site. Cox shall promptly give notice to City of any possible injury, loss, or damage to persons or property occurring on the Site, or discharge of hazardous substances, wastes, or materials.

9. Assignments and Liens. Cox may not sublease, sublicense, transfer, or assign this Agreement or the rights granted herein without the prior written consent of City.

10. Attorney's Fees. If a Party institutes an administrative proceeding (e.g., mediation or arbitration) or files a lawsuit to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees, including those incurred in any subsequent appeals.

11. Licenses and Permits. Each Party shall, at its own expense, obtain all permits, certificates, licenses or other approvals that may be required by federal, state, or local authorities.

12. Suitability of Use. Cox accepts the Site in "AS IS" condition, as of the Effective Date, subject to all applicable zoning, federal, state, and local laws and ordinances governing the Site. Cox warrants that it has inspected the Site and exercised due diligence in evaluating the suitability and lawfulness of the Site for the purposes outlined in this Agreement.

13. Nondiscrimination. Each Party shall comply with all applicable laws, regulations, rules, and executive orders relating to nondiscrimination in employment and in the provision of services.

14. Conflict of Interest. This Agreement, and any subsequent renewal, is subject to cancellation pursuant to A.R.S. § 38-511.

15. Notices. Except as otherwise required by law, any notice required or permitted under this Agreement will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid. Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective on the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice will be given as herein provided. Any notices permitted hereunder may be given by a Party's legal counsel. Notices shall be provided to:

As to Cox:

Cox Communications Arizona, LLC
1550 West Deer Valley Road
Building C
Phoenix, Arizona 85027
Attn: VP Construction

As to City:

City of Mesa
Right of Way Manager
20 East Main Street
PO Box 1466
Mesa, AZ 85211-1466

Copy to:

Cox Communications Arizona, LLC
6205-B Peachtree-Dunwoody Drive
Atlanta, Georgia 30328
Attn: Government Affairs

Copy to:

City of Mesa
City Attorney
20 East Main Street
PO Box 1466
Mesa, AZ 85211-1466

16. Insurance. Cox shall maintain during the term of this Agreement insurance policies described below issued by companies licensed in Arizona with a current A.M. Best rating of A:VII or better. At the signing of this Agreement and annually thereafter, Cox shall furnish to the City certificates of insurance evidencing the required coverages, conditions, and limits required by this Agreement. Insurance coverage required under this Agreement shall be:

16.1 Commercial General Liability. CGL insurance with a limit of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, property damage, personal injury, and products and completed operations, including but not limited to, the liability assumed under the indemnification provisions of this Agreement.

16.2 Commercial Automobile Liability. Auto insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to owned, hired, and non-owned vehicles.

16.3 Workers' Compensation. Workers' Compensation Insurance with limits statutorily required by any Federal or state law and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

16.4 Professional Liability. Professional liability insurance covering acts, errors, mistakes, and omissions arising out of the work or services performed by City, or any person employed by City, with a limit of not less than \$1,000,000 each claim/\$2,000,000 aggregate.

16.5 The insurance policies, except Worker's Compensation and Professional Liability, shall be endorsed to name the City, and its agents, officers, officials, employees, and volunteers as additional insureds.

16.6 In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two years past the expiration of this Agreement and must be evidenced by annual certificates of insurance. Cox's insurance must be primary, and any insurance or self-insurance maintained by the City shall not contribute to it.

17. Governing Law, Exclusive Venue. The law of the State of Arizona shall govern the interpretation and performance of this Agreement. Any action brought to enforce this Agreement or the License granted herein may only be brought in a court in Maricopa County, Arizona.

18. Relationship of Parties. The employees of a Party shall not be, and shall not be deemed or considered, the employees of the other Parties.

19. Amendment. The Parties may modify this Agreement only through a written amendment to it signed by representatives of each party authorized to sign contracts for that Party.

20. Entire Agreement. This Agreement and its Exhibits, which are incorporated herein, contain all the agreements, promises and understandings between the parties and supersede all prior negotiations and agreements.

21. Severability. If any provision of this Agreement is declared invalid or unenforceable, that provision shall be deemed modified to the extent necessary to make it valid and enforceable. If it cannot be so modified, it shall be deemed severed, and the remaining provisions of this Agreement shall remain in full force and effect.

22. Recitals. The Recitals set forth in Paragraphs A through D, inclusive, are incorporated into this Agreement by reference, and form a part of this Agreement.

[Signatures appear on the following pages]

The Parties have executed this Agreement as of the date first above written.

CITY OF MESA

By:

Elizabeth Huning
City Engineer

Date:

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Christopher J. Brady, the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged he signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

COX COMMUNICATIONS ARIZONA, LLC

By: [Signature]

Name: Cory Somerville

Title: Vice President - Construction

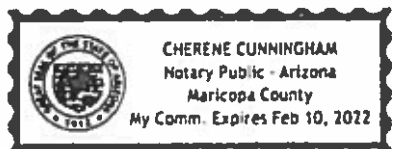
Date: 6/10/21

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 10 day of June, 2021, by Cory Somerville, the Vice President of Cox Communications Arizona, LLC, who acknowledged he/she signed the foregoing instrument on behalf of Cox Communications Arizona, LLC.

[Signature]
Notary Public

My commission expires: 2/10/22



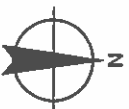
**Exhibit A
Depiction of the Site
(see attached)**



- Existing City Vault
- New City Vault
- Existing City Manhole

**SITE
Exhibit A**

- Joint Trench Ductbank
- MCA Parcels



The City of Mesa makes no claims concerning the accuracy of the data on this product nor assumes any liability from the use of the information herein. Copyright 1988, 2020 City of Mesa, Arizona.

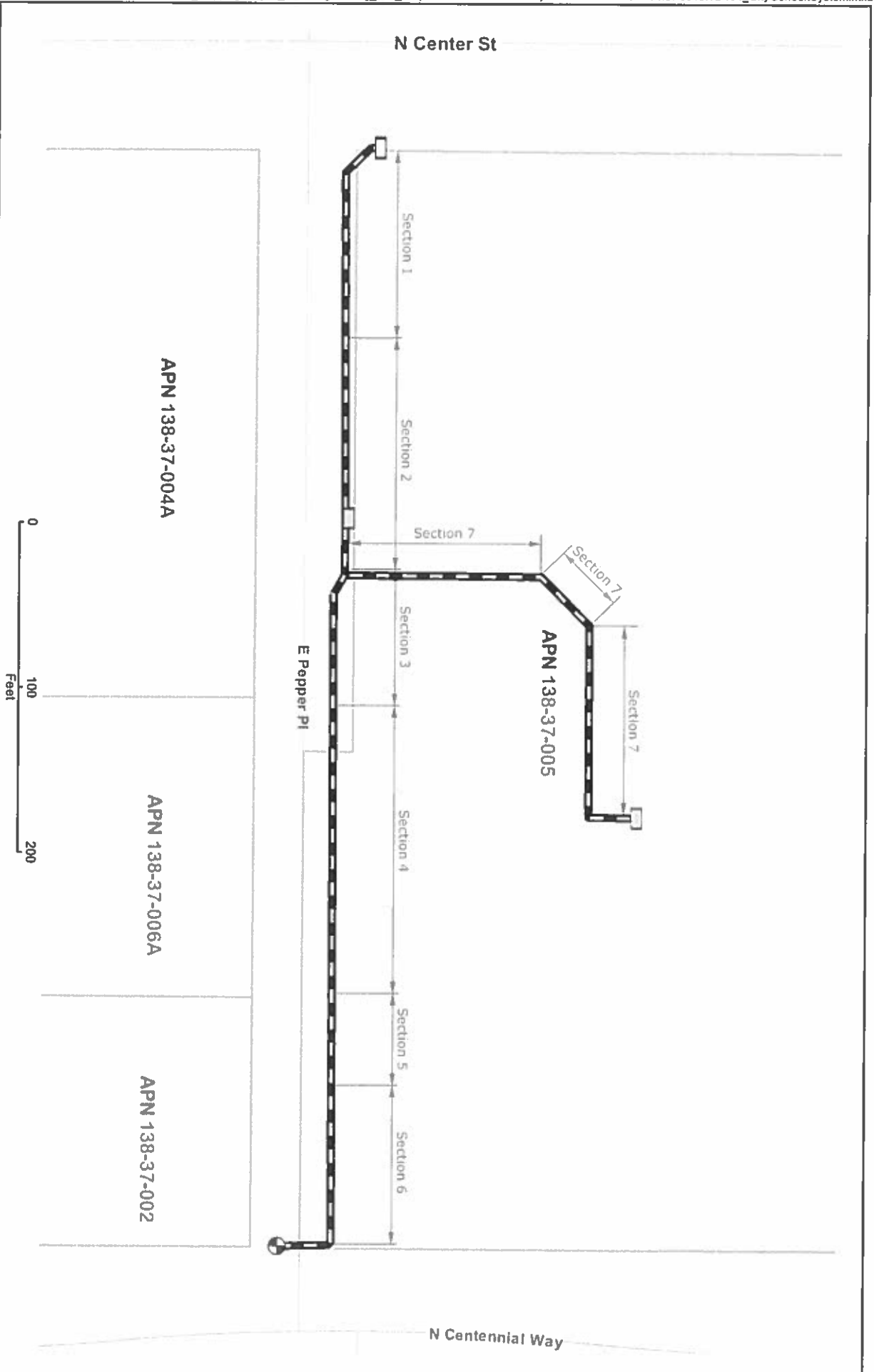
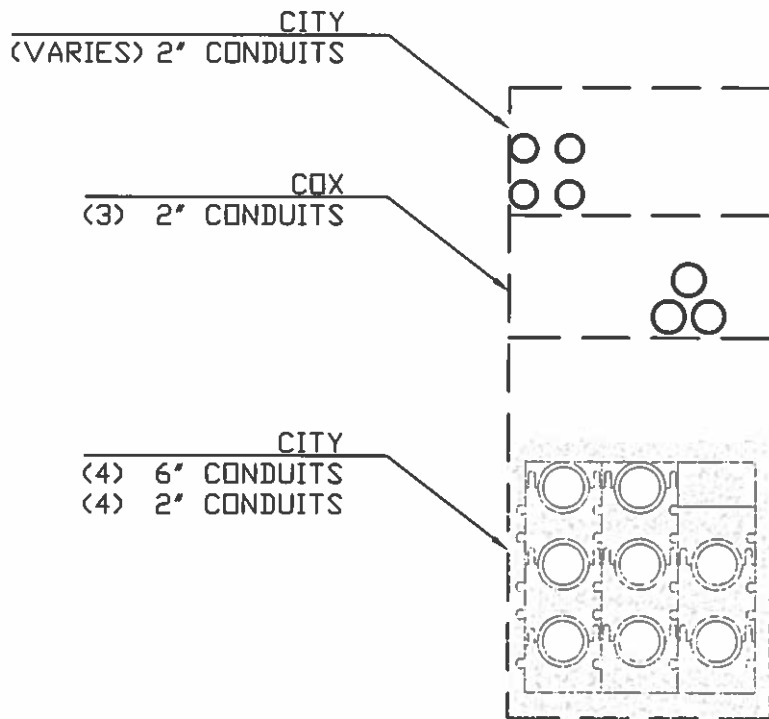


Exhibit B
Depiction of the Cox Conduit System
(see attached)

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CONDUIT SYSTEM
(COX/CITY)
SECTION 1



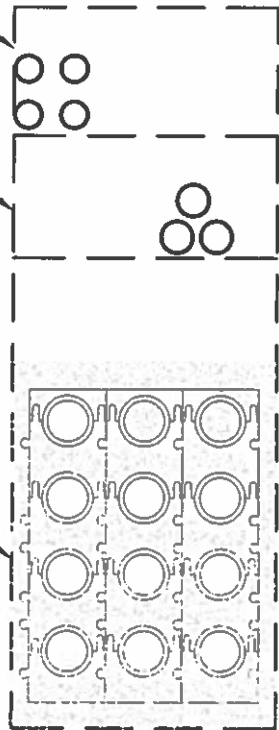
EXHIBIT B

DATE: 4/7/20 E:\CP0919 CITY CENTER UTILITY IMPROVEMENTS\DESIGN\CADD FILES\MISC\JOINT TRENCH DETAILS_REV1.DWG

CITY
(VARIES) 2" CONDUITS

COX
(3) 2" CONDUITS

CITY
(4) 6" CONDUITS
(4) 2" CONDUITS
(4) 4" CONDUITS



CONDUIT SYSTEM
(COX/CITY)
SECTION 2



EXHIBIT B

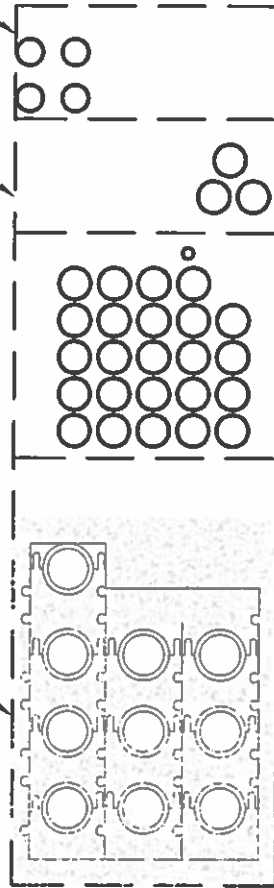
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CITY
(VARIES) 2" CONDUITS

COX
(3) 2" CONDUITS

CITY
(6) 6" CONDUITS
(4) 2" CONDUITS

CITY
(24) 4" CONDUITS
(1) 1" WITH TRACER WIRE



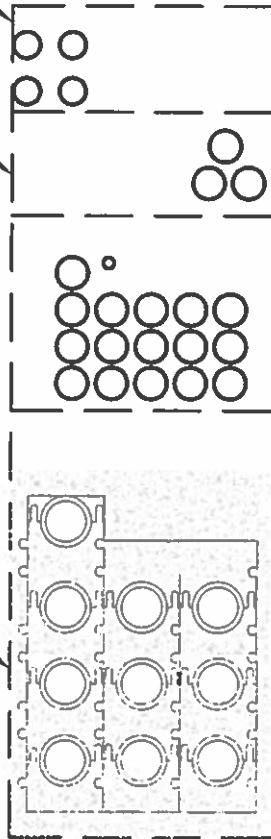
CONDUIT SYSTEM
(COX/CITY)
SECTION 3

CITY
(VARIES) 2" CONDUITS

COX
(3) 2" CONDUITS

CITY
(6) 6" CONDUITS
(4) 2" CONDUITS

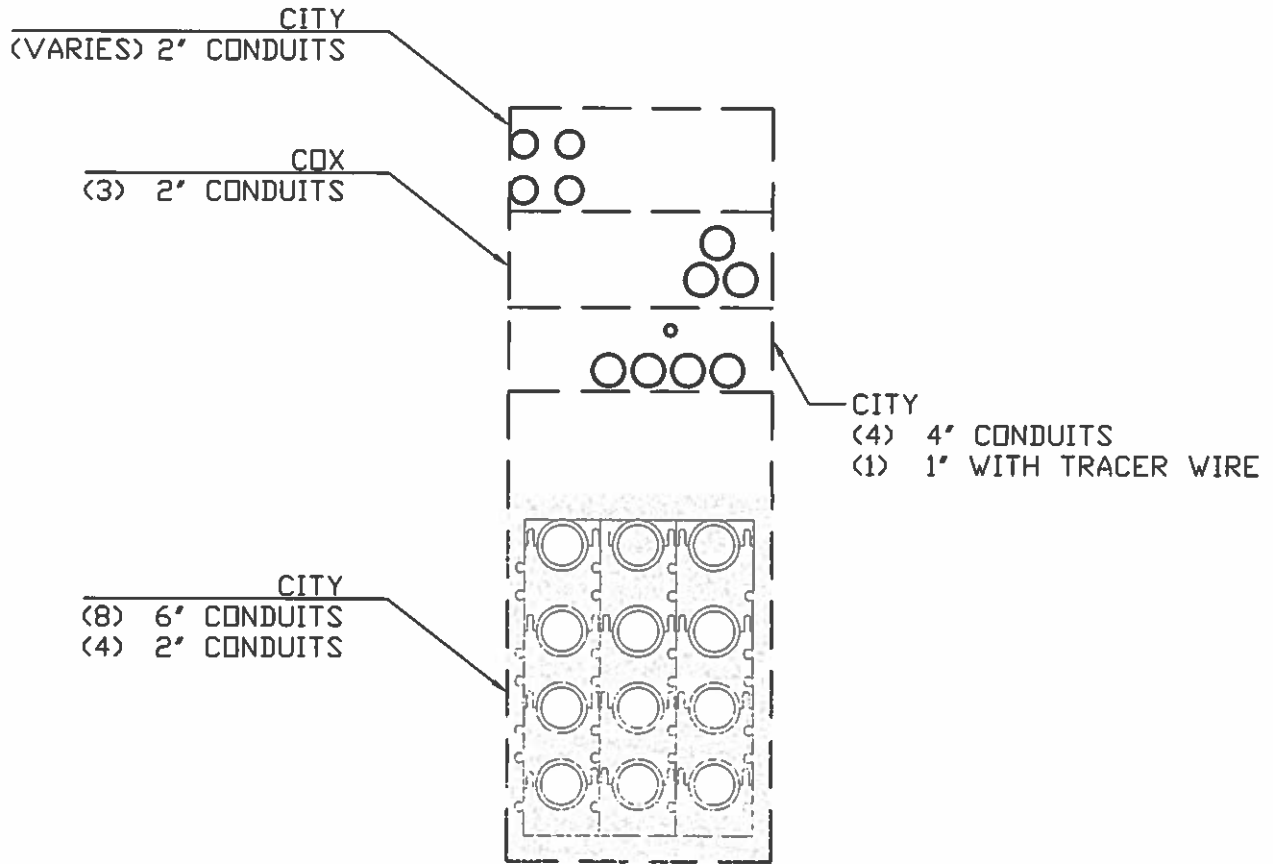
CITY
(16) 4" CONDUITS
(1) 1" WITH TRACER WIRE



CONDUIT SYSTEM
(COX/CITY)
SECTION 4

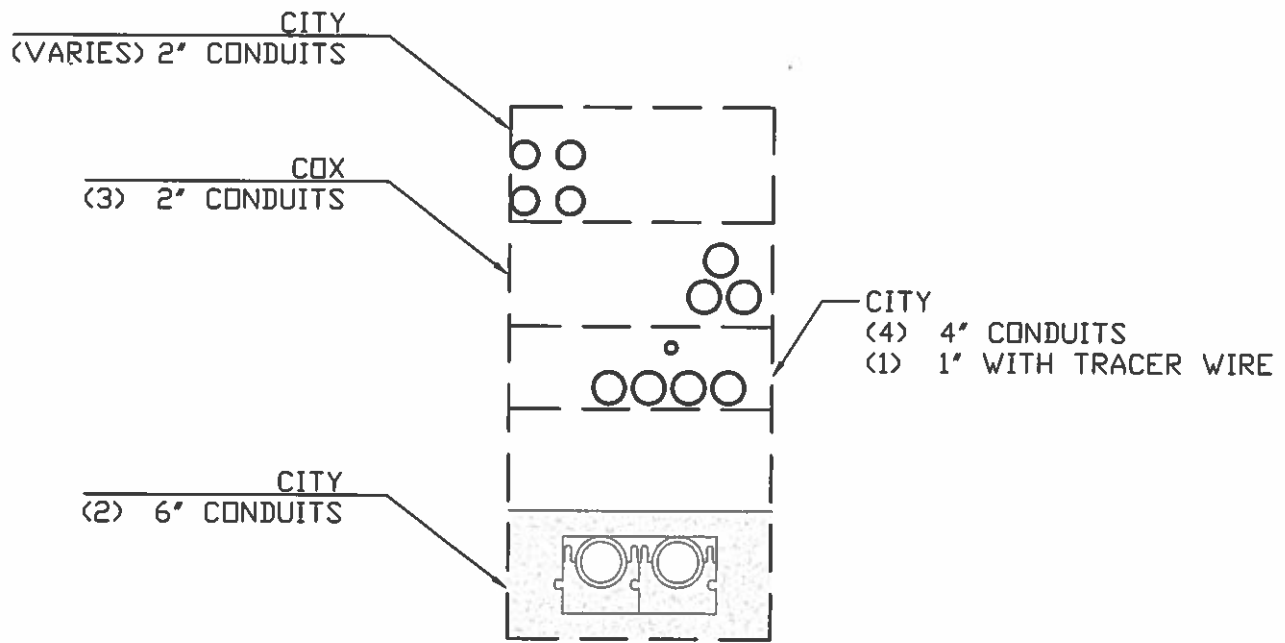
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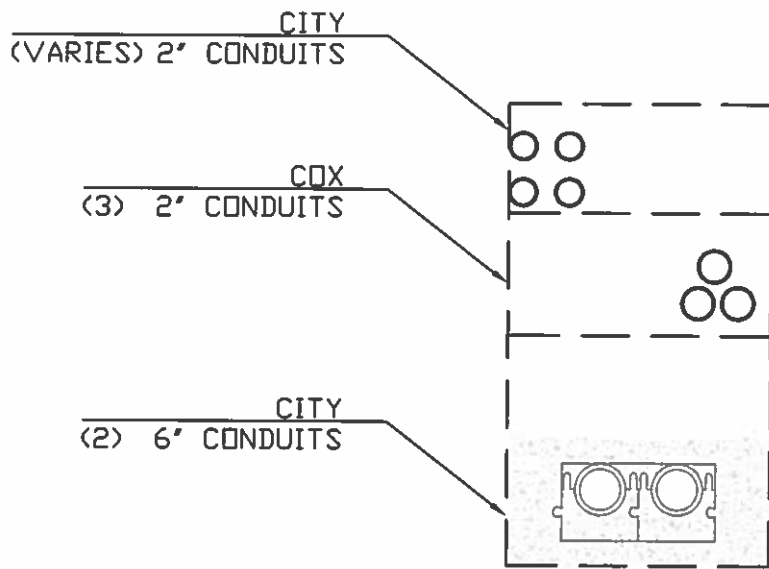
CONDUIT SYSTEM
(COX/CITY)
SECTION 5

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CONDUIT SYSTEM
(COX/CITY)
SECTION 6

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CONDUIT SYSTEM
(COX/CITY)
SECTION 7

**Exhibit C
Reimbursement Invoice
(see attached)**

Cox Total Cost Share for Joint Trench	
Total Length (lf)*	1197
Joint Trench	\$ 45,775.65
Conduit	\$ 47,004.00
Total Cost	\$ 92,779.65

*Cox total length from Cox Permit Set (1,019' + 178' NE to Council Chambers)

Cox Conduit Cost**	
Base Bid	\$ 11,182.00
AE 1	\$ 3,833.00
AE25	\$ 31,989.00
Total	\$ 47,004.00

**Total Costs come from GMP1 Premier bid sheet and Allowance Expenditure bids provided by DPR